SYKT. PEMANDANGAN SINAR SDN. BHD. & ANOR.

v.

NATIONAL UNION OF JOURNALISTS MALAYSIA & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
EUSOFF CHIN J
[ORIGINATING MOTION NO. R8-32-149-88]
27 FEBRUARY 1991

LABOUR LAW: *Award - Definition - Whether included collective agreement - Deeming provisions - Whether successors of employers are bound by a collective agreement - Industrial Relations Act 1967, ss. 17(1)(a), 32(1), (2) 33(2).*

STATUTORY INTERPRETATION: *Employer placed under receivership - Party to a collective agreement - Whether successors of employer are bound by collective agreement - Definition of "award" - Whether includes collective agreement - Deeming provisions - Industrial Relations Act 1967, ss. 17(1)(a), 32(1), (2), 33(2).*

On 27 April 1987, Sin Poh (Star News) Amalgamated Malaysian Sdn. Bhd., S, had entered into a collective agreement (the said collective agreement) with the 1st respondent, the National Union of Journalists (NUJ); this collective agreement was given cognizance No. 71/87 by the Industrial Court (IC). As a result of accumulated losses, S was placed under receivership on 3 September 1987 and its permit was also cancelled by the Minister of Home Affairs (the Minister) on 28 October 1987. However, on 26 March 1988, the Minister issued to the 1st appellant, SPS, a permit for publication of newspaper called Sin Chew Jit Poh; SPS' application was supported by the receivers and managers of S. The physical assets of S were sold by the receivers and managers of S to the 2nd appellant, SRH.

Under s. 13 of the Industrial Relations Act 1967 (the Act), NUJ applied for a determination of whether SPS and SRH were bound by the said collective agreement because of their position as successors, assignees or transferees of S under receivership. The 2nd respondent, IC answered this query in the affirmative in Award No. 244/88. The appellants subsequently applied for *certiorari* to quash this award, contending *inter alia,* that

(a) Section 17(1)(a) is applicable only to successors of employers who are trade unions;

(b) the word "award" in s. 32(1) and (2) does not include a collective agreement deemed by s. 17(1) to be an award

(c) the word "award" in s. 33(2) does not include a collective agreement deemed by s. 17(1) to be an award of the IC.

Held:

[1] The word "their" in s. 17(1)(a) refer to "parties" and "members" appearing in that section; the provision of s. 17(1)(a) make it mandatory that these successors, assignees or transferors are automatically bound by the award notwithstanding that the collective agreement has not made any provision on this issue.

[2] Section 32 of the Act is a general provision which deals with the effect of an award of the IC; to give effect to the provisions of s. 32(2), it is necessary to include the words "Any award made by the Court under this Act" in s. 32(1) to include a collective agreement deemed by s. 17(1) to be an award made by the IC.

[3] (a) Section 33(2) should not be read in isolation; the omission of the words "collective agreement" or "agreement" was a drafting error and was not intentional; subs (1) and (2) must be read together;

(b) to avoid any absurdity, the word "award" in s. 33(2) should also include a collective agreement which has been given cognizance by the IC and deemed by s. 17(1) to be an award. To dispel any doubt, Parliament has amended s. 33(2) by inserting words "or agreement" after the word "award" appearing in that section.

[4] The IC had therefore rendered a correct interpretation of s. 17(1) to mean that an agreement will be binding on successors of parties to an agreement and also on the relevant members of the trade union which is a party to the agreement.

[5] The High Court issued an order of *certiorari* to quash the part of Award No. 244/88 whereby the IC had stated that it did not know who the real successor of S was but that it was either SPS and SRH. This part of the order was quashed as no evidence was taken by the IC nor were submissions made by either parties on this issue.

[Order accordingly]

Cases referred to:
Kuala Lumpur & Selangor Chinese Chambers of Commerce v. Chong Chong Siong [1987] 1 ILR 239
Sin Poh (Star News) Amalgamated (M) Sdn. Bhd., Sin Chew Jit Poh (Malaysia) v. National Union of Journalists Malaysia [1988] 2 ILR 263

Legislation referred to:
Industrial Relations Act 1967, ss. 17(1), (1)(d), 32, (1), (1)(b), (2), 33, (1), (2), (3)

Other source referred to:
Industrial Disputes Law in Malaysia 2nd Edn. p. 50 by C.P. Mills

For the appellants - Ambiga Sreenevasan; M/s. Skrine & Co.
For the respondents - Ramdas; M/s. Siva, Ram & Associates

[**Editor's note:** The appellants have appealed to the Supreme Court on the issue of interpretation of s. 17(1)(a) of the Act *vide* Supreme Court Civil Appeal No. 02-354-1990]

JUDGMENT

Eusoff Chin J:

Sin Poh (Star News) Amalgamated Malaysia Sdn. Bhd. (Sin Chew Jit Poh Malaysia) had entered into a collective agreement with the National Union of Journalists (1st respondent) on 27 April 1982 which had been given cognizance No. 71/87 by the Industrial Court. Due to accumulated losses, Sin Chew Jit Poh Malaysia was placed under receivership on 3 September 1987. Its newspaper publishing permit was cancelled by the Minister of Home Affairs on 28 October 1987.

On 26 March 1988 the Minister of Home Affairs issued permit for the publication of a newspaper called 'Sin Chew Jit Poh' to the 1st appellant. The application for this permit by the 1st appellant had been supported by receivers and managers of Sin Chew Jit Poh Malaysia.

The 1st appellant offered employment to 404 former employees of Sin Chew Jit Poh Malaysia, and it was alleged that the 1st appellant became the new employer for these employees.

The physical assets of Sin Chew Jit Poh Malaysia including land, buildings, plants, machinery, vehicles and stock in trade, and the product name of "Sin Chew Jit Poh" were sold by the receivers and managers to the 2nd appellant.

It was alleged that the 1st appellant is a subsidiary company of the 2nd appellant. However no evidence was adduced before the Industrial Court to establish this connection. The Industrial Court in its Award No. 244/88 at p. 3, para. 1, stated that evidence would be taken at an adjourned hearing to establish this fact.

The Award No. 244/88 was the result of an application by the 1st respondent made under (s. 33 of the Industrial Relations Act 1967 (the Act) for the Industrial Court to determine the following question:

> The union contends that Rimbunan Hijau Estate Sdn. Bhd. and or its subsidiary Pemandangan Sinar Sdn. Bhd. are bound by the collective agreement dated 27 April 1987 (Cognisance No. 71/87) because of their position as successors, assignees or transferee of Sin Poh (Star News) Amalgamated (M) Sdn. Bhd. (Sin Chew Jit Poh Malaysia) - under receivers & managers and therefore legally, socially and morally has to observe all the terms contained in the collective agreement.

The Industrial Court had answered in the affirmative this question in Award No. 244/1988. Upon an application for *certiorari* to quash this award, I had made my findings and order. The appellant's appeal to the Supreme Court is only on one issue. It concerns the interpretation of s. 17(1)(a) of the Act, which states:

> 17.(1) A collective agreement which has been taken cognisance of by the Court **shall be deemed to be an award** and shall be binding on:
>
> (a) the parties to the agreement including in any case where a party is a trade union of employers, all members of such trade union to whom the agreement relates and their successors, assignees or transferee.

The Industrial Court had followed C.P. Mills' views in his book on "*Industrial Disputes Law in Malaysia*", 2nd Edn. at p. 50, where the author stated that s. 17(1)(a) of the Act to be consistent with s. 32 of the Act should:

> mean that an agreement is to be binding on the successors, both of the parties to the agreement, and of the relevant members of the employers' trade union which is a party of the agreement.

The learned Counsel for the appellants, Puan Ambiga Sreenivasan did not agree with this interpretation of s. 17(1)(a) of the Act. Before me she argued as follows:

> Section 17(1)(a) rightly refers to members of the trade unions of employers.
>
> Submit s. 17(1)(a) is applicable where the employer is a member of a trade union of employers. I submit the successors are only successors of the employer who is a trade union. The Industrial Court says successors of parties to the agreement are included. My view is contrary to C.P. Mill's 2nd Edn., at pp. 15 and 16 of Bundle of Authorities.
>
> As to s. 32(b) of Industrial Relations Act and s. 17(1), there is a distinction because s. 32 says "any award made by the Court", not collective agreement.
>
> Submit s. 32(1)(b) and s. 17 are different and award though deemed by s. 17(1) is not an award as is envisaged in s. 32(1). In s. 33(2) the word 'award' does not include collective agreement.

A reference was made to the collective agreement, and Puan Sreenevasan pointed to me that the collective agreement itself does not state that it binds the successors, assignees or the transferee of the parties to the agreement.

I think the grammatical construction of s. 17(1)(a) is quite plain and clear. It says that a collective agreement which has been taken cognizance of by the Industrial Court is deemed to be an award of that Court; and

(i) that award binds the parties to the agreement, their successors, assignees, or transferee; and

(ii) where a party to the collective agreement is a trade union of employers, the award also binds all the employers who are members of that trade union to whom the agreement relates, and the members' successors, assignees, or transferee.

The word "their" in s. 17(1)(a) of the Act must refer to the words 'parties' and 'members' appearing in that section.

The provisions of s. 17(1)(a) of the Act make it mandatory that these successors, assignees or transferee are automatically bound by the award notwithstanding that the collective agreement has made no provision on this issue.

It was argued and I do not agree, that the word 'award' mentioned in s. 32(1) and (2) of the Act does not include a collective agreement deemed by s. 17(1) of the Act to be an award. Considering what has been provided for by s. 32(2) of the Act, to agree to this argument would certainly lead to manifest absurdity. Section 32 of the Act is a general provision which deals with the effect of an award of the Industrial Court. To give effect to the provisions of s. 32(2) of the Act, it is necessary to interpret the words " Any award made by the Court under this Act" appearing in s. 32(1) of the Act to include a collective agreement deemed by s. 17(1) of the Act to be an award made by the Industrial Court.

It was further argued that the 'award' in s. 32(2) of the Act does not include a collective agreement deemed by s. 17(1) of the Act to be an award of the Industrial Court. I think s. 33(2) should not be read in isolation. Section 33 of the Act states:

33.(1) If any question arises as to the interpretation of any award or collective agreement taken cognizance of by the Court, the Minister may refer the question, or any party bound by the award or agreement may apply, to the Court for a decision on the question.

(2) The Court may, upon the application of any party, by order vary any of the terms of **an award,** if it considers it desirable so to do for the purpose solely or removing ambiguity or uncertainty.

(3) The parties bound by the award or agreement shall be afforded a reasonable opportunity of being heard.

(4) The decision of the Court shall be binding in the same manner as the original award or agreement.

Read in isolation, it is true that s. 33(2) of the Act refers only to "an award" as it does not mention "a collective agreement". I believe the omission of the words "collective agreement" or "agreement" was a drafting error and was not intentional. Subsections (1), (2) and (3) of s. 33 of the Act must be read together. Otherwise it would be ridiculous for a party to a collective agreement to apply under s. 33(1) for the Industrial Court to interpret a provision of the agreement, but that under s. 33(2) of the Act the Industrial Court cannot give its interpretation on that application because s. 33(2) makes no mention of the agreement, even after the parties bound by the agreement were given reasonable opportunities of being heard

under s. 33(3) of the Act. To avoid any absurdity, the word 'award' in s. 33(2) should also include a collective agreement which has been given cognisance by the Industrial Court and deemed by s. 17(1) of the Act to be an award. Indeed to dispel any doubt, Parliament had seen it fit to make an amendment to s. 33(2) by inserting the words 'or agreement' after the word 'award' appearing in that subsection (see PU(A) 718/89 effective on 10 February 1989).

I therefore agree that the Industrial Court had made the correct interpretation of s. 17(1) of the Act to:

> mean that an agreement is to be binding on the successors, both of the parties to the agreement, and of the relevant members of the employers' trade union which is a party to the agreement.

Rider

It may be pertinent for me to mention that I had on the hearing of this motion on 18 July 1990 issued an order of *certiorari* to quash the decision of the Industrial Court in Award 244/88 which stated "we do not know who the real successor (of Sin Poh (Star News) Amalgamated Malaysia Sdn. Bhd.) is between the two (the appellants) **but it should be one or the other".** This was because no evidence was taken by the Industrial Court, nor submissions by the parties heard before it to determine the issue as to whether the appellants, either of them or none of them were/was a successor/successors of Sin Poh (Star News) Amalgamated Malaysia Sdn. Bhd.

Also found at [1991] 2 CLJ 1208